

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

PUBLIC UTILITIES
COMMISSION

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FILED

In the Matter of the Application of

HAWAIIAN ELECTRIC COMPANY, INC.

For Approval of Rate Increases and Revised
Rate Schedules and Rules

DOCKET NO. 2008-0083

HAWAIIAN ELECTRIC COMPANY, INC.'S MOTION FOR LEAVE TO
FILE A REPLY TO WAL-MART'S MOTION FOR RECONSIDERATION

EXHIBIT A

AND

CERTIFICATE OF SERVICE

GOODSILL ANDERSON QUINN & STIFEL
A LIMITED LIABILITY LAW PARTNERSHIP LLP

THOMAS W. WILLIAMS, JR.
PETER Y. KIKUTA
DAMON L. SCHMIDT
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, Hawaii 96813
Telephone: (808) 547-5600
Facsimile: (808) 547-5880

Attorneys for
HAWAIIAN ELECTRIC COMPANY, INC.

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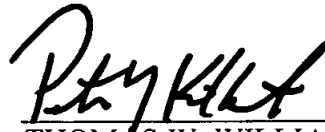
HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") respectfully requests that it be allowed to file a reply to the Motion for Reconsideration submitted by Wal-Mart Stores, Inc. and Sam's West, Inc. ("Motion for Reconsideration") filed November 12, 2008.

This Motion is filed pursuant to Section 6-61-41 and -140 of the Commission's Rules of Practice and Procedure, Title 6, Chapter 61 of the Hawaii Administrative Rules. Hawaii Administrative Rules Section 6-61-140 states that "[t]he commission may allow replies to a motion for rehearing or reconsideration or a stay, if it deems those replies desirable or necessary."

If this Motion is granted, attached as Exhibit A to this Motion is a copy of the reply that HECO will file no later than 3 business days after the order granting this Motion is served on HECO.

A hearing is not requested on this Motion.

DATED: Honolulu, Hawaii, November 19, 2008.

A handwritten signature in black ink, appearing to read 'P. Williams, Jr.', written over a horizontal line.

THOMAS W. WILLIAMS, JR.

PETER Y. KIKUTA

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**HAWAIIAN ELECTRIC COMPANY, INC.'S REPLY TO WAL-MART'S
MOTION FOR RECONSIDERATION**

HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") respectfully submits this Reply to the Motion for Reconsideration submitted by Wal-Mart Stores, Inc. and Sam's West, Inc. ("Motion for Reconsideration")¹ filed November 12, 2008.

This Reply is filed pursuant to Section 6-61-140 of the Commission's Rules of Practice and Procedure, Title 6, Chapter 61 of the Hawaii Administrative Rules ("Commission's Rules of Practice and Procedure"). Hawaii Administrative Rules Section 6-61-140 states that "[t]he commission may allow replies to a motion for rehearing or reconsideration or a stay, if it deems those replies desirable or necessary."²

I. STANDARD FOR A MOTION FOR RECONSIDERATION

Section 6-61-137 of the Hawaii Administrative Rules ("H.A.R.") sets forth the standard that must be met when filing a motion for reconsideration: "The motion shall be filed within ten days after the decision or order is served upon the party, setting forth specifically the grounds on

¹ Wal-Mart Stores, Inc. and Sam's West, Inc. are collectively referred to as "Wal-Mart".

² HECO filed a motion for leave to file a reply to Wal-Mart's Motion for Reconsideration on November 19, 2008, which motion was granted by the Commission.

which the movant considers the decision or order unreasonable, unlawful, or erroneous.”

H.A.R. §6-61-137.

The Commission has stated “[i]n evaluating motions for reconsideration, we consider whether matters have been overlooked or mistakenly conceived.” Re Gray Line Hawaii, Ltd., Docket No. 96-0218, Order No. 15380 (February 25, 1997) at 3 (citing In re Kauai Electric Division of Citizens Utilities Company, 60 Hawaii 166, 195, 590 P.2d 524, 543 (1978)).

II. DISCUSSION

A. WAL-MART’S ARGUMENTS

Wal-Mart’s Motion for Reconsideration does not demonstrate that the Order Denying Intervention³ was unreasonable, unlawful or erroneous with respect to denying Wal-Mart’s motions to intervene. The crux of Wal-Mart’s argument is that the Order Denying Intervention is allegedly unreasonable to the extent that Wal-Mart was denied intervention on the basis of “procedural defects”.⁴ See Motion at 7. Wal-Mart claims that its Second Motion to Intervene was “dismissed” by the Commission and the merits of its Second Motion to Intervene were not considered:

The final reason the Commission used to justify the denial of Wal-Mart’s intervention here was because it would not consider the merits of the Second Wal-Mart Motion. The Commission decided to treat the Second Wal-Mart Motion as an unauthorized reply memorandum to the *withdrawn* Wal-Mart motion, and as such dismissed it.

³ The Order Denying Motions to Intervene and Motion for Leave to File a Reply; Dismissing as Moot Motions to Appear and Motion for an Enlargement of Time; Ruling on the Completeness of HECO’s Application; and Directing the Parties to File a Stipulated Procedural Order within Thirty Days filed October 31, 2008 is referred to as the “Order Denying Intervention”.

⁴ As background, Wal-Mart filed its initial Motion to Intervene and Become a Party on August 20, 2008 (“First Motion to Intervene”). HECO filed its memorandum in opposition to the motion on August 27, 2008. On September 2, 2008, Wal-Mart filed a Notice of Withdrawal Without Prejudice of Motion to Intervene and Become a Party, filed August 20, 2008 in which Wal-Mart withdrew without prejudice, the First Motion to Intervene. On September 2, 2008, Wal-Mart filed a Motion to Intervene and Become a Party (“Second Motion to Intervene”). On September 29, 2008, the Hawaii Commercial Energy Customer Group filed a Motion to Intervene and Become a Party (“HCEG Motion to Intervene”).

Motion for Reconsideration at 5 (*italics in original; underlining added*).

A complete reading of the Order Denying Intervention appears to state that the Second Motion to Intervene was considered on the merits and then denied. First, the Order Denying Intervention does not state that the merits of Wal-Mart's Second Motion to Intervene were not considered. Second, the Order Denying Intervention does not state that Wal-Mart's Second Motion to Intervene was "dismissed"; the order states that the Second Motion to Intervene was denied. The Order Denying Intervention stated:

With respect to Wal-Mart's Second Intervention Motion, it is, as noted above, an improved version of its First Intervention Motion. Accordingly, the commission will treat Wal-Mart's Second Intervention Motion as an unauthorized Reply Memorandum under its rules and will deny the motion. Given the commission's denial of both of Wal-Mart's intervention motions, the commission dismisses as moot Wal-Mart's Motion to Appear, and HECO's Enlargement Motion.

Order Denying Intervention at 14 (*footnote omitted; underlining added*).

In addition, Wal-Mart's contention that the merits of the Second Motion to Intervene were not considered does not take into consideration the distinction between the words "deny" and "dismiss" as used in the Order Denying Intervention. The passage from the Order Denying Intervention quoted above states that Wal-Mart's Second Motion to Intervene was denied (and not dismissed). Other parts of the Order Denying Intervention provide insight that a motion will be denied after the merits of the motion are considered - - "[e]ven if the commission were to consider the First Intervention Motion on its merits, the commission would deny the motion, as the support provided by Wal-Mart is conclusory and brief (i.e., less than two pages of substantive support is provided in the First Intervention Motion)." Order Denying Intervention at 14 (*underlining added*).

In contrast, other pleadings were “dismissed” as moot (i.e., Wal-Mart’s Motion to Appear, and HECO’s Enlargement Motion), and not considered on the merits. The reason being that they did not need to be considered by the Commission as the motions underlying those pleadings (i.e., Wal-Mart’s First and Second Motions to Intervene) were denied or withdrawn.

B. WAL-MART’S REQUESTED PARTICIPANT STATUS

Wal-Mart’s Motion for Reconsideration requests relief that is different from what was requested in its First and Second Motions to Intervene and in the HCEG Motion to Intervene. Instead of requesting that it be permitted to intervene, Wal-Mart states that it “seeks only to participate in the docket as to issues of cost allocation and rate design. To that end, Wal-Mart is seeking solely the ability to have its experts submit testimony on these limited areas as well as the opportunity to file legal briefs as part of the docket.” Motion for Reconsideration at 8.

As explained above, Wal-Mart has not shown that the Commission’s denial of its motions to intervene were unreasonable, unlawful, or erroneous. Therefore, Wal-Mart’s Motion for Reconsideration should be denied. However, if Wal-Mart is granted participant status limited to the subject areas and procedural steps identified in its Motion for Reconsideration, then Wal-Mart’s witnesses should be subject to responding to discovery requests on their written testimony, and responding to questions at an evidentiary hearing (if an evidentiary hearing is held). This is similar to the scope of participation granted participant Rocky Mountain Institute in Hawaii Electric Light Company, Inc.’s 2006 test year rate case. See Docket No. 05-0315, Order No. 22663 (filed August 1, 2006) at 9-10.

In addition, the Motion for Reconsideration did not request that Wal-Mart be permitted to participate in any settlement discussions and/or settlement agreement between the parties. As such, if participant status is granted to Wal-Mart, the order should make clear that Wal-Mart’s

participation should not be permitted in any settlement agreement between the parties. This is consistent with the scope of participation previously granted a participant.⁵ Further, Wal-Mart's participation should not affect the schedule of proceedings or the statement of the issues, and Wal-Mart should be required to comply with the Commission's Rules of Practice and Procedure.

DATED: Honolulu, Hawaii, _____, 2008.

THOMAS W. WILLIAMS, JR.
PETER Y. KIKUTA
DAMON L. SCHMIDT

Attorneys for
HAWAIIAN ELECTRIC COMPANY, INC

⁵ See, e.g., the Stipulated Regulatory Schedule attached as Exhibit A to Order No. 22884, issued September 21, 2006 in Docket No. 2006-0084, page 2, wherein the Commission limited a participant's participation by the condition that the participant's assent to any settlement agreement between all or any of the parties was not required:

To the extent settlement discussions occur collectively amongst the Parties, the Participant shall receive notice and have the opportunity to participate in such settlement discussions, provided that the assent of the Participant shall not be required to any settlement reached by all or any of the Parties.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing HAWAIIAN ELECTRIC COMPANY, INC.'S REPLY TO WAL-MART'S MOTION FOR RECONSIDERATION, together with this Certificate of Service, as indicated below by hand delivery and/or by mailing a copy by United States mail, postage prepaid, to the following:

Hand Delivery	U.S. Mail	
X		Catherine Awakuni, Executive Director Department of Commerce and Consumer Affairs Division of Consumer Advocacy 335 Merchant Street, Room 326 Honolulu, Hawaii 96813
	X	Gayle B. Chestnut Naval Facilities Engineering Command Pacific 258 Makalapa Drive, Suite 100 Pearl Harbor, HI 96860-3134 Counsel for the Department of the Navy on behalf of the Department of Defense
	X	Dr. Kay Davoodi NAVFAC HQ 1322 Patterson Ave., S.E., Suite 1000 Washington, DC 20374-5065
X		Bruce Nakamura Joseph A. Stewart Kobayashi Sugita & Goda 999 Bishop Street, Suite 2600 Honolulu, HI 96813 Counsel for Wal-Mart

DATED: Honolulu, Hawaii, _____, 2008.

THOMAS W. WILLIAMS, JR.
PETER Y. KIKUTA
DAMON L. SCHMIDT

Attorneys for
HAWAIIAN ELECTRIC COMPANY, INC.

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing HAWAIIAN ELECTRIC COMPANY, INC.'S MOTION FOR LEAVE TO FILE A REPLY TO WAL-MART'S MOTION FOR RECONSIDERATION, EXHIBIT A, together with this Certificate of Service, as indicated below by hand delivery and/or by mailing a copy by United States mail, postage prepaid, to the following:

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X		Catherine Awakuni, Executive Director Department of Commerce and Consumer Affairs Division of Consumer Advocacy 335 Merchant Street, Room 326 Honolulu, Hawaii 96813
	X	Gayle B. Chestnut Naval Facilities Engineering Command Pacific 258 Makalapa Drive, Suite 100 Pearl Harbor, HI 96860-3134 Counsel for the Department of the Navy on behalf of the Department of Defense
	X	Dr. Kay Davoodi NAVFAC HQ 1322 Patterson Ave., S.E., Suite 1000 Washington, DC 20374-5065
X		Bruce Nakamura Joseph A. Stewart Kobayashi Sugita & Goda 999 Bishop Street, Suite 2600 Honolulu, HI 96813 Counsel for Wal-Mart

DATED: Honolulu, Hawaii, November 19, 2008.

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THOMAS W. WILLIAMS, JR.

PETER Y. KIKUTA

DAMON L. SCHMIDT

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